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No. 82-1646

IN THE
Supreme Court of the United States

OCTOBER TERM, 1982

ROLLS-ROYCE LIMITED,
Petitioner,

v.

J. WILLARD NALLS, JR., As Administrator for the Estate of JOHN C. ABRAHAM, Deceased, CAROL E. RAMAMURTI, As Administratrix For the Estate of CHINNI P. RAMAMURTI, Deceased,
Plaintiffs-Respondents,

AIR INDIA, INC., and AEROSPATIALE (SNIAS) (Societe National Industrielle Aerospatiale),
Defendants-Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Respondents' brief in opposition offers no appropriate basis for the denial of certiorari. They concede, as they must, that these two wrongful death cases have *no* contact whatsoever with the United States District Court for the District of Columbia, but nonetheless assert that certiorari would be inappropriate because the denial of petitioner's motion to dismiss for *forum non conveniens* is not reviewable under the collateral order rule established in *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949), either because it does not affect a sub-

*Petitioner's affiliates and subsidiaries are listed or described in the petition.

stantive right of petitioner or, if it does, because the disposition of such motions is within the sole discretion of the district judge. Both propositions are incorrect.

Unlike a denial of a change of courtrooms sought by a motion to transfer under 28 U.S.C. § 1404(a), petitioner is faced with preparing and trying this complicated aircraft disaster litigation twice rather than once, with one situs a remote forum where none of the underlying facts of the litigation occurred, where none of the evidence exists, and where the court is unfamiliar with all applicable substantive law. Surely the right to be free from such duplicative litigation is a substantive right as to which, as Circuit Judges Wilkey and MacKinnon found, "the district court's order is conclusive for all practical purposes."[1]

In *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 234 (1981), this Court concluded as a matter of law that a plaintiff could not defeat a motion to dismiss on the ground of *forum non conveniens* merely by showing that the substantive law that would be applied in the alternative forum is less favorable than that of the present forum. Here, respondents urge that the district court's decision is unreviewable although the only point urged in their brief to sustain the district court's "discretion" would be the loss of the American contingent fee system for paying lawyers if the cases were to be litigated in England with the 54 others arising from the same accident. The issue presented here is no different from that presented in *Piper Aircraft*, since all that is urged to support the district court's denial of the motion is that lawyers in

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[1] Appendix to the petition ("Pet. App."), at 6a. In addition, the decision below has now been reported. *See* 702 F.2d 255, 258 (D.C. Cir. 1983).

England are arguably more expensive than lawyers in the United States.

Respondents would mask the absence of any contact with the District of Columbia by urging various miscellaneous connections with the United States as a whole. From this they argue that as U.S. residents their selection of a remote forum is entitled to great weight. At least before the decision of these cases, however, it had been settled that residence (here in Washington State or Maryland) or even American citizenship is "largely irrelevant" to motions based upon *forum non conveniens*. *Pain* v. *United Technologies Corp.*, 637 F.2d 775, 797 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 1128 (1981).

The denial of petitioner's motion to dismiss for *forum non conveniens* "appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. at 546. Precisely as *Cohen* demands, a significant issue has been decided which is separable from and collateral to the merits, and which will result in irreparable loss if an appeal is denied. Without review, Rolls-Royce will be denied any realistic opportunity for appeal, and the appealability of similar decisions will be left uncertain. The result will be needless burdens upon litigants and the lower courts. Strong considerations of efficient judicial administration warrant review of the decisions below.

With respect to the substantive issue of *forum non conveniens*, the district court's decision introduces confusion and uncertainty into the standards applicable to the issue. It conflicts both with the rules of law adopted

by this Court and with earlier decisions of the courts of appeals. Without review, "abuses of jurisdiction" will be encouraged,[2] and needless additional obligations will be imposed upon already-overburdened courts.[3]

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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[2] Pet. App. at 14a; 702 F.2d at 262.

[3] One insignificant change has occurred, or will soon occur, in the facts as they existed at the time of the petition. An employee of Rolls-Royce who was based in England at the time of the accident subsequently moved to Seattle, Washington. He has now moved, or will soon move, to the District of Columbia area. Judges Wilkey and MacKinnon correctly assumed below that this employee was only "tangentially involved" in the relevant events, Pet. App. at 3a, 702 F.2d at 256, and Rolls-Royce does not expect any testimony he might have to be material. No other employee of Rolls-Royce with the slightest relevance to these cases is anywhere in the United States.